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is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted."

TRANSFER TAX; ASSESSMENT OF SHARES OF STOCK IN A CORPORATION  
ORGANIZED UNDER THE LAWS OF TWO STATES.

In appraising the value of shares of stock to ascertain the amount of tax to be imposed under the New York transfer tax law, an interesting question was presented to the Court of Appeals of that state in the case of *Charles P. Cooley, et al. as executors v. The Comptroller*, 78 N. E. 939. The law provides for a tax upon the transfer by will or intestate law of any property or interest therein over a certain value when the decedent is a non-resident of the state at the time of his death. In this case the decedent was a resident of Connecticut. He transferred by will shares of stock in the Boston and Albany Railroad Company, a consolidated corporation organized under the laws of both New York and Massachusetts. The question presented to the court was whether in making the assessment the state of New York should recognize the full value of the shares held by the decedent, or whether it should limit the tax to a portion of the total value upon the theory that the company holds its property in Massachusetts at least under its incorporation in that state.

It would seem by an examination of former decisions rendered by the New York courts that a conclusion could be reached without much difficulty. Though this precise question had not previously been presented, yet in the late case, *In re Palmer's Estate*, 76 N. E. 13, it was said by Judge Gray that a share of capital stock represents the distinct interest which its holder has in the corporation. That his right to participate in the distribution of the net earnings of the corporation as a going concern or in its assets upon dissolution, is proportionate to the number of shares which he holds; these evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest regarded as an entity and is unapportionable with reference to the *situs* of the corporate properties. Adding to this opinion of Judge Gray the fact that a consolidated corporation organized under two or more states, by seeking the aid of the laws of New York and being incorporated thereunder, is considered a domestic corporation therein (*Matter of Sage, et al.*, 70 N. Y. 220), it would seem that the same result must follow in the assessment of this present tax as where shares are held in a corporation incorporate alone under the laws of New York and holding property outside the state. *In re Bronson*, 150 N. Y. 1. The court, however, adopted a contrary doctrine which seems to be based upon the equitable view that otherwise stockholders would be subjected to hardship. It is pointed out that if New York levied a tax assessed upon the full value of the shares, the other states of incorporation might do the same, resulting in double taxation. Such taxation courts should avoid whenever it is possible within reason to do so and all presumptions are against its imposition. *Tennessee v. Whitworth*, 117 N. S. 129. "The law of

taxation is to be construed strictly against the state in favor of the taxpayer as represented by the executor of the estate. *Matter of Fayerweather*, 143 N. Y. 114."

This is undoubtedly true, but we respectfully submit that the learned court has seemed to lose sight of the particular law by virtue of which this assessment is made and the construction of which is called for by this decision. The history of legislation upon this subject in New York and elsewhere shows a desire to remedy the fact that as a general rule the great bulk of personal property escapes taxation during the life of the owner since, from its very nature it can be readily concealed. And it was in regard to a message to the legislature by the chief executive of that state calling for some additional tax law to remedy this evil that the first of a series of acts was passed of which the present is the culmination. (Opinion by Judge Vance in *Bronson's Case*, 150 N. Y. 1). Among other provisions the law now in force provides for the tax of the transfer by will of property within the state as above stated, the word property being afterward defined to include "all property or interest therein whether situated within or without this state." (Laws of 1898, Chapter 88, Section 242.) Thus plainly intending to make the tax as sweeping in its results as possible.

Since, therefore, the state has complete power to tax the transfer of stock as property at its true value when such shares are held in corporations organized under its laws regardless of where their property is situated (*Plummer v. Coler*, 178 U. S. 115), it would seem that such was the plain and undoubted intention of the legislature in the present instance. And this being the case, the presumption against the possibility of double taxation is rebutted. If such a construction will operate harshly upon certain individuals the remedy is not with the courts but rather with the legislature for a change in the enactment.

There is no case to our knowledge which has decided this identical question. The New York court considers *Moody v. Shaw*, 173 Mass. 375, and says that the opinion in that case does not seem to warrant a construction to the effect that such a transfer of shares as here under consideration would be taxed according to their full value. There the corporation involved was also the Boston and Albany Railroad. It is true that this precise point did not arise and the opinion is very short. But a careful consideration of that case leads one to draw the inference that in that state the transfer of such shares of stock for the purpose of taxation, would be assessed as shares in any domestic corporation regardless of the situation of the corporate property and incorporation elsewhere.

#### THE JURISDICTION OF THE FEDERAL COURTS IN CASES OF CONSPIRACY AGAINST PERSONS OF AFRICAN DESCENT.

On October 24, 1906, the Supreme Court of the United States, filed an opinion in the case of *Hodges v. United States*, 203 U. S. 1, which can hardly fail to be of universal interest especially in the southern sections of the country. In that case the court, in an